

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division

In re: )  
 )  
CIRCUIT CITY STORES, INC., et al., ) Case No. 08-35653-KRH  
 ) Chapter 11  
Debtors. ) (Jointly Administered)

**STATEMENT OF ISSUES ON APPEAL AND DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD OF APPEAL**

502-12 86<sup>th</sup> Street LLC, Cottonwood Corners – Phase V, LLC and Woodlawn Trustees, Incorporated (collectively, the “Landlords” or “Appellants”), by counsel, submit this statement of issues on appeal and designation of items to be included in the record on appeal, pursuant to the Court’s authority to hear this appeal under 28 U.S.C. § 158(a)(1), from those parts of the Order of the Bankruptcy Court entered on January 26, 2009 (the “Order”), and the Memorandum Opinion of the Court dated February 12, 2009 (the “Opinion”) denying the respective motions of the Landlords that the Debtors be compelled to pay post-petition rent for the period from November 10, 2008 (the “Petition Date”) through November 30, 2008 (the “Stub Rent”) for leases under which the rental obligations for the month of November 2008 became due and payable on November 1, 2008 (the “Paid In Advance Leases”) immediately or, at the latest, within sixty days after the Petition Date. The Landlords do not appeal from the portions of the Order holding that the Stub Rent is entitled to administrative claim priority pursuant to section 503(b)(1) of the Bankruptcy Code. In accordance with Rule 8006 of the Federal Rules of

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Bankruptcy Procedure, the issues to be presented on appeal and the items to be included in the record on appeal are listed below:

**STATEMENT OF ISSUES ON APPEAL**

1. Did the Bankruptcy Court err in holding that section 365(d)(3) of the Bankruptcy Code does not require the Stub Rent for the Paid in Advance Leases to be paid immediately, or at the latest, within sixty days after the Petition Date?
2. Did the Bankruptcy Court err in holding that requiring the Debtors to pay the Stub Rent for the Paid in Advance Leases immediately, or within sixty days after the Petition Date at the latest, would be elevating the Stub Rent to "superpriority" claim status?
3. Did the Bankruptcy Court err in holding that it had the discretion to postpone payment of the Stub Rent for the Paid in Advance leases by characterizing such claims as allowed administrative claims under section 507(a) of the Bankruptcy Code, not payable until the effective date of a plan of reorganization?

**DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

The Appellants hereby designate the following items to be included in the record on appeal, together with all exhibits, attachments, and documents incorporated by reference therein:

1. Motion of Burbank Mall Associates, LLC for an Order Compelling Payment of Post-Petition Rent Pursuant to 11 U.S.C. § 365(d)(3) entered on November 21, 2008 (Docket No. 296).
2. Motion of Crown CCI, LLC for an Order Compelling Payment of Post-Petition Rent and Post-Petition Taxes Pursuant to 11 U.S.C. §365(d)(3) entered on November 21, 2008 (Docket No. 298).

3. Amended Motion of Crown CCI, LLC for an Order Compelling Payment of Post-Petition Rent and Post-Petition Taxes Pursuant to 11 U.S.C. § 365(d)(3) entered on November 24, 2008 (Docket No. 333).

4. Motion by Woodlawn Trustees, Incorporated for an Order (A) Compelling Debtor to Immediately Pay Administrative Rent Pursuant to 11 U.S.C. §§ 365(d)(3) and 503(b); and (B) Granting Related Relief and Supporting Memorandum entered on November 25, 2008 (Docket No. 390).

5. Motion by 502-12 86th Street LLC for an Order (A) Compelling Debtor to Immediately Pay Administrative Rent Pursuant to 11 U.S.C. §365(d)(3) and 503(b); and (B) Granting Related Relief and Supporting Memorandum entered on November 25, 2008 (Docket No. 396).

6. Motion by Basile Limited Liability Company for an Order (A) Compelling Debtor to Immediately Pay Administrative Rent Pursuant to 11 U.S.C. §365(d)(3) and 503(b); and (B) Granting Related Relief and Supporting Memorandum entered on November 25, 2008 (Docket No. 403).

7. Demand by Green 521 5th Avenue LLC for Payment of all Post-Petition Rent and Performance by Debtor of all of Its Obligations Under Its Commercial Lease in Accordance with Bankruptcy Code §365(d)(3) entered on December 1, 2008 (Docket No. 538).

8. Motion and Supporting Memorandum of CCDC Marion Portfolio, L.P. for an Order Compelling Payment of Post-Petition Rent Pursuant to 11 U.S.C. §§ 365(d)(3) entered on December 2, 2008 (Docket No. 565).

9. Panattoni Denton's (1) Objections to Motion of the Debtors for Order Under Section 365(d)(4) Extending Time Within Which Debtors May Assume or Reject Unexpired

Leases of Nonresidential Real Property and (II) Request to Compel Compliance with Obligations Under Section 365(d)(3) entered on December 3, 2008 (Docket No. 623).

10. Panattoni Northglenn's (I) Objections to Motion of the Debtors for Order Under Section 365(d)(4) Extending Time Within Which Debtors May Assume or Reject Unexpired Leases of Nonresidential Real Property and (II) Request to Compel Compliance with Obligations Under Section 365(d)(3) entered on December 3, 2008 (Docket No. 630).

11. Debtors' Omnibus Objection to the Motions Pursuant to 11 U.S.C. §§ 365(a) and 503(b) to Compel Allowance and Payment of Post-Petition Rental Obligations as Administrative Expenses entered December 3, 2008 (Docket No. 641).

12. Motion and Supporting Memorandum of Polaris Circuit City, LLC for an Order (A) Compelling Debtors to Immediately Pay Administrative Rent Pursuant to 11 U.S.C. §§ 365(d)(3) and 503(b); and (B) Granting Related Relief entered on December 3, 2008 (Docket No. 647).

13. Joinder of Centro Properties Group, Federal Realty Investment Trust, Cencor Realty, the Hutensky Group, the Morris Companies Affiliates, and Uniwest Commercial Realty in Motions of Various Landlords for Allowance of Administrative Claims and Payment of Stub Rent for November 2008 entered on December 4, 2008 (Docket No. 712).

14. Motion of Hayward 880, LLC for an Order Compelling Payment of Post-Petition Rent, CAM and Taxes Pursuant to 11 U.S.C. § 365(d)(3) entered on December 9, 2008 (Docket No. 816).

15. Motion of Save Mart Supermarkets for an Order Compelling Payment of Post-Petition Rent, CAM and Related Charges Pursuant to 11 U.S.C. § 365(d)(3) entered on December 10, 2008 (Docket No. 838).

16. Motion of CC-Investors 1997-4, LLC for an Order Compelling Payment of Post-Petition Rent Pursuant to 11 U.S.C. § 365(d)(3) entered on December 10, 2008 (Docket No. 875).

17. Objection of Triangle Equities Junction LLC to Debtor's Motion Setting Procedures for Sale or Rejection of Non-Residential Leases and Cross Motion for an Order (A) Compelling Debtors to Immediately Pay Administrative Rent Pursuant to 11 U.S.C. §§ 365(d)(3) and 503(b), and (B) Granting Related Relief entered on December 10, 2008 (Docket No. 877).

18. Exhibits to Objection and Cross Motion of Triangle Equities Junction LLC entered on December 10, 2008 (Docket No. 885).

19. Motion of the Lucknow Landlords for an Order Compelling Payment of Post-Petition Rent Pursuant to 11 U.S.C. § 365(d)(3) entered on December 11, 2008 (Docket No. 898).

20. Transcript of December 5, 2008 hearing entered on December 12, 2008 (Docket No. 942).

21. Motion and Supporting Memorandum of Annapolis Plaza LLC for an Order (A) Compelling Debtor to Immediately Pay Administrative Rent Pursuant to 11 U.S.C. §§ 365(d)(3) and 503(b); and (B) Granting Related Relief entered on December 11, 2008 (Docket No. 901).

22. Motion and Supporting Memorandum of Law of Baker Natick Promenade LLC, BPP-CONN LLC, BPP-Redding LLC, BPP-VA LLC, BPP-NY LLC, BPP-OH LLC, and BPP-SC LLC for an Order Compelling Debtors to Immediately Pay Administrative Rent Pursuant to 11 U.S.C. §§ 365(d)(3) and 503(b) and Granting Related Relief entered on December 12, 2008 (Docket No. 945).

23. Landlords' Motion and Supporting Memorandum for an Order Compelling Payment of Post-Petition Rent and Granting Related Relief and Supplement to Joinder in Limited Objection by 120 Orchard LLC, et al. [Docket Nos. 277 and 354] entered on December 12, 2008 (Docket No. 949).

24. Amended Motion of Burbank Mall Associates, LLC for an Order Compelling Payment of Post-Petition Rent and Post-Petition Taxes Pursuant to 11 U.S.C. § 365(d)(3) entered on December 12, 2008 (Docket No. 960).

25. Motion and Supporting Memorandum of Law of McAlister Square Partners, Ltd. for an Order Compelling Debtors to Immediately Pay Administrative Rent Pursuant to 11 U.S.C. sections 365(d)(3) and 503(b) and Granting Related Relief entered on December 12, 2008 (Docket No. 969).

26. Motion and Supporting Memorandum of Law of Amherst VF LLC (Amherst, NY); East Brunswick VF LLC (East Brunswick, NJ); Vornado Gun Hill Road LLC (Bronx, NY); North Plainsfield VF LLC (North Plainfield, NJ); Alexander's Rego Park Center, Inc. (Rego Park, NY); Towson VF LLC (Towson, MD); Green Acres Mall, LLC (Valley Stream, NY); Wayne VF LLC (Wayne, NJ); VNO Mundy Street LLC (Wilkes-Bane, PA); VNO Tm Dale Mabry LLC (Tampa, FL) for an Order Compelling Debtors to Immediately Pay Administrative Rent Pursuant to 11 U.S.C. sections 365(d)(3) and 503(b) and Granting Related Relief entered on December 12, 2008 (Docket No. 971).

27. Motion of Cole CC Groveland FL, LLC and Cole CC Aurora CO, LLC for an Order Compelling the Debtor to Perform Timely All Lease Obligations Including the Payment of Post-Petition Rent entered on December 12, 2008 (Docket No. 975).

28. Motion and Supporting Memorandum of Law of Colonial Heights Holding, LLC for an Order Compelling Debtors to Immediately Pay Administrative Rent Pursuant to 11 U.S.C. sections 365(d)(3) and 503(b) and Granting Related Relief entered on December 12, 2008 (Docket No. 977).

29. Motion and Supporting Memorandum of CIM/Birch St., Inc. for an Order (A) Compelling Debtor to Immediately Pay Administrative Rent Pursuant to 11 U.S.C. sections 365(d)(3) and 503(b), and (B) Granting Related Relief entered on December 12, 2008 (Docket No. 980).

30. Motion and Supporting Memorandum of Principal Life Insurance Company for an Order (A) Compelling Debtor to Immediately Pay Administrative Rent Pursuant to 11 U.S.C. §§ 365(d)(3) and 503(b), and (B) Granting Related Relief entered on December 12, 2008 (Docket No. 983).

31. Motion and Supporting Memorandum of Law of PrattCenter LLC and Valley Corners Shopping Center, LLC for an Order Compelling Debtors to Immediately Pay Administrative Rent Pursuant to 11 U.S.C. sections 365(d)(3) and 503(b) and Granting Related Relief entered on December 12, 2008 (Docket No. 984).

32. Exhibit D to Motion and Supporting Memorandum of Law of PrattCenter LLC and Valley Corners Shopping Center, LLC entered on December 12, 2008 (Docket No. 985).

33. Motion of Port Arthur Holdings, Ill, Ltd. for an Order Compelling Debtor to Immediately Pat Post-Petition Rent and Other Related Charges Pursuant 11 U.S.C. section 365(d)(3) and Granting Requested Relief entered on December 16, 2008 (Docket No. 1025).

34. Debtors' Second Omnibus Objection to the Motions Pursuant to 11 U.S.C. §§ 365(a) and 503(b) to Compel Allowance and Payment of Post-Petition Rental Obligations as Administrative Expenses entered December 18, 2008 (Docket No. 1100).

35. Joinder of Developers Diversified Realty Corporation, General Growth Properties, Inc., Weingarten Realty Investors, Basser-Kaufman, Inc., Philips International Holding Corp., Regency Centers, LP., AAC Management Corp., Jones Lang LaSalle Americas, Inc., Continental Properties Company, Inc., and Benderson Development Company, LLC in Motions for an Order Compelling Immediate Payment of Post-Petition Rent entered December 19, 2008 (Docket No. 1140).

36. Transcript of December 22, 2008 hearing (not yet docketed).

37. Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 2, 2009 (Docket No. 1347).

38. Joinder to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 5, 2009 (Docket No. 1363).

39. Joinder of 502-12 86th Street LLC to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 5, 2009 (Docket No. 1365).

40. Joinder of Eatontown Common Shopping Center, AMCAP Northpoint LLC, and AMCAP Arborpoint LLC to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 6, 2009 (Docket No. 1370).

41. Joinder to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 6, 2009 (Docket No. 1375).

42. Port Arthur Holdings, III, Ltd. Joinder to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 6, 2009 (Docket No. 1384).

43. Joinder to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 7, 2009 (Docket No. 1392).

44. Joinder of Plaza Las Americas, Inc. to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 8, 2009 (Docket No. 1414).

45. Joinder to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 9, 2009 (Docket No. 1437).

46. Morgan Hill Retail Venture L.P.'s Joinder to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 9, 2009 (Docket No. 1438).

47. Joinder of 120 Orchard LLC, 427 Orchard LLC, and FT Orchard LLC to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 9, 2009 (Docket No. 1447).

48. Joinder to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 9, 2009 (Docket No. 1455).

49. Transcript of January 9, 2009 hearing (not yet docketed).

50. Joinder of Developers Diversified Realty Corporation, General Growth Properties, Inc., Weingarten Realty Investors, Basser-Kaufman, Inc., Philips International Holding Corp., Regency Centers, L.P., AAC Management Corp., Jones Lang LaSalle Americas, Inc., Continental Properties Company, Inc., and Benderson Development Company, LLC to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 13, 2009 (Docket No. 1484).

51. Joinder of First Industrial Realty Trust, Inc. to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 13, 2009 (Docket No. 1487).

52. Notice of Joinder in Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent entered January 13, 2009 (Docket No. 1488).

53. Motion by Cottonwood Corners-Phase V, LLC for an Order (A) Compelling Debtor to Immediately Pay Administrative Rent Pursuant to 11 U.S.C. Section 365(d)(3) and 503(b); and (B) Granting Related Relief and Supporting Memorandum (Docket No. 1489).

54. Joinder of Cottonwood Corners - Phase V, LLC to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of

November Rent, and Memorandum in Support Thereof entered January 13, 2009 (Docket No. 1492).

55. Joinder of Ramco West Oaks, LLC RLV Village Plaza, LP, and RLV Vista Plaza, LP to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 14, 2009 (Docket No. 1505).

56. Joinder to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 14, 2009 (Docket No. 1511).

57. Debtors' Objection to the Motion for Rehearing and/or Reconsideration to Alter or Amend the Judgment Regarding Payment of the November Rent entered January 14, 2009 (Docket No. 1514).

58. Joinder of Dollar Tree Stores, Inc. and Torrington Triplets LLC to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 15, 2009 (Docket No. 1542).

59. Joinder of Annapolis Plaza LLC to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 15, 2009 (Docket No. 1543).

60. Madison Waldorf, LLC's Joinder in Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 15, 2009 (Docket No. 1554).

61. Joinder of Hagan Properties, Inc. to Landlords' Motion for Rehearing and/or Reconsideration and/or to Alter or Amend the Judgment Regarding Payment of November Rent, and Memorandum in Support Thereof entered January 15, 2009 (Docket No. 1603).

62. Transcript of January 16, 2009 hearing entered January 20, 2009 (Docket No. 1674).

63. Findings of Fact and Conclusions of Law from Hearing Held December 22, 2008 on Motions to Compel Payment of Postpetition Rent entered January 26, 2009 (Docket Nos. 1780 and 1781).

64. Memorandum Opinion of the Court dated February 12, 2009, relating to Order on Motion to Reconsider (Docket No. 2107).

Dated: February 18, 2009

HIRSCHLER FLEISCHER, PC

By: /s/ Sheila deLa Cruz  
Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of February, 2009, I caused a copy of the foregoing to be served by electronic means on the "2002" and "Core" lists and through the ECF system.

/s/ Sheila deLa Cruz  
Sheila deLa Cruz